

AMENDED IN SENATE APRIL 12, 2004

AMENDED IN SENATE MARCH 23, 2004

**SENATE BILL**

**No. 1676**

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**Introduced by Senator Romero**

February 20, 2004

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An act to amend Section ~~13730~~ 6129 of the Penal Code, relating to ~~domestic violence~~ crime.

LEGISLATIVE COUNSEL'S DIGEST

SB 1676, as amended, Romero. ~~Domestic violence: peace officers~~  
*Crime.*

*Existing law requires the Inspector General, the Youth and Adult Correctional Agency, the Department of the Youth Authority, the Department of Corrections, the Board of Corrections, the Youthful Offender Parole Board, and the Board of Prison Terms to refer matters involving criminal conduct in the context of employee retaliation to the proper law enforcement authorities for further action and also to notify the Attorney General of the action. Existing law provides that if the local district attorney refuses to accept the case, the matter shall be referred to the Attorney General.*

*This bill would require the Attorney General to make an independent evaluation of the evidence of criminal conduct and to make a de novo determination whether to accept the case based upon whether there is sufficient evidence to sustain a conviction.*

~~Existing law requires all law enforcement agencies to prepare a written incident report containing specified information on a form specific to domestic violence incidents about all domestic violence related calls for assistance made to the department.~~

~~This bill would require the domestic violence report to include a notation of whether the officer noticed evidence of injuries or bodily harm to the victim, assailant, or both.~~

~~Because this bill would require local law enforcement agencies to collect additional information and record it on the specified form, it would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~yes~~ *no*.

*The people of the State of California do enact as follows:*

- 1   ~~SECTION 1. Section 13730 of the Penal Code is amended to~~
- 2   ~~SECTION 1. Section 6129 of the Penal Code is amended to~~
- 3   ~~read:~~
- 4   6129. (a) (1) For purposes of this section, “employee”
- 5   means any person employed by the Youth and Adult Correctional
- 6   Agency, the Department of Corrections, the Department of the
- 7   Youth Authority, the Board of Corrections, the Board of Prison
- 8   Terms, the Youthful Offender Parole Board, or the Inspector
- 9   General.
- 10   (2) For purposes of this section, “retaliation” means
- 11   intentionally engaging in acts of reprisal, retaliation, threats,
- 12   coercion, or similar acts against another employee who has done
- 13   either of the following:
- 14   (A) Has disclosed or is disclosing to any employee at a
- 15   supervisory or managerial level, what the employee, in good faith,
- 16   believes to be improper governmental activities.
- 17   (B) Has cooperated or is cooperating with any investigation of
- 18   improper governmental activities.



(b) (1) Upon receiving a complaint of retaliation from an employee, the Inspector General may commence an investigation. All investigations conducted pursuant to this section shall be performed, where applicable, in accordance with the requirements of Chapter 9.7 (commencing with Section 3300) of Title 1 of Division 4 of the Government Code.

(2) When investigating a complaint, in determining whether retaliation has occurred, the Inspector General shall consider, among other things, whether any of the following either actually occurred or were threatened:

(A) Unwarranted or unjustified staff changes.

(B) Unwarranted or unjustified letters of reprimand or other disciplinary actions, or unsatisfactory evaluations.

(C) Unwarranted or unjustified formal or informal investigations.

(D) Engaging in acts, or encouraging or permitting other employees to engage in acts, that are unprofessional, or foster a hostile work environment.

(E) Engaging in acts, or encouraging or permitting other employees to engage in acts, that are contrary to the rules, regulations, or policies of the workplace.

(3) Upon authorization of the complainant employee, the Inspector General may release the findings of the investigation of alleged retaliation to the State Personnel Board for appropriate action.

(c) Any employee at any rank and file, supervisory, or managerial level, who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against another employee, pursuant to paragraph (2) of subdivision (a), shall be disciplined by adverse action as provided in Section 19572 of the Government Code. If no adverse action is taken, the State Personnel Board shall invoke adverse action proceedings as provided in Section 19583.5 of the Government Code.

(d) (1) In addition to all other penalties provided by law, including Section 8547.8 of the Government Code or any other penalties that the sanctioning authority may determine to be appropriate, any state employee at any rank and file, supervisory, or managerial level found by the State Personnel Board to have intentionally engaged in acts of reprisal, retaliation, threats, or coercion shall be suspended for not less than 30 days without pay,

1 and shall be liable in an action for damages brought against him  
2 or her by the injured party. If the State Personnel Board determines  
3 that a lesser period of suspension is warranted, the reasons for that  
4 determination must be justified in writing in the decision.

5 (2) Punitive damages may be awarded by the court if the acts  
6 of the offending party are proven to be malicious. If liability has  
7 been established, the injured party also shall be entitled to  
8 reasonable attorney's fees as provided by law.

9 (e) Nothing in this section shall prohibit the employing entity  
10 from exercising its authority to terminate, suspend, or discipline  
11 an employee who engages in conduct prohibited by this section.

12 (f) The Inspector General, the Youth and Adult Correctional  
13 Agency, the Department of the Youth Authority, the Department  
14 of Corrections, the Board of Corrections, the Youthful Offender  
15 Parole Board, and the Board of Prison Terms shall refer matters  
16 involving criminal conduct to the proper law enforcement  
17 authorities in the appropriate jurisdiction for further action. The  
18 entity making a referral to the local district attorney shall also  
19 notify the Attorney General of the action. If the local district  
20 attorney refuses to accept the case, he or she shall notify the  
21 referring entity who shall subsequently refer the matter to the  
22 Attorney General. If the local district attorney has not acted on the  
23 matter, the referring entity shall notify the Attorney General. *The*  
24 *Attorney General shall make an independent evaluation of the*  
25 *evidence of criminal conduct being referred and shall make a de*  
26 *novo determination whether to accept the case based upon*  
27 *whether there is sufficient evidence to sustain a conviction.* It is the  
28 intent of the Legislature that the Department of Justice avoid any  
29 conflict of interest in representing the State of California in any  
30 civil litigation that may arise in a case in which an investigation has  
31 been or is currently being conducted by the Bureau of  
32 Investigation by contracting when necessary for private counsel.

33 (g) Upon the completion of any investigation *of retaliation*, the  
34 Inspector General shall prepare a written report, which shall be  
35 held as confidential and disclosed in confidence, only to the  
36 Secretary of the Youth and Adult Correctional Agency, the  
37 Governor, and the appropriate director or law enforcement agency.  
38 A summary of the report's findings and conclusions shall be made  
39 available, upon request, to the person who requested the

1 investigation, the person or persons who were the subjects of the  
2 investigation, and to any Member of the Legislature.

3 (h) Nothing in this section shall preclude the office of the  
4 Inspector General from following all applicable laws regarding  
5 confidentiality, including, but not limited to, the California Public  
6 Records Act, the Public Safety Officers Procedural Bill of Rights,  
7 the Information Practices Act of 1977, the Confidentiality of  
8 Medical Information Act, and the provisions of Section 832.7  
9 relating to the disposition notification for complaints against peace  
10 officers.

11 read:

12 ~~13730. (a) Each law enforcement agency shall develop a~~  
13 ~~system, by January 1, 1986, for recording all domestic~~  
14 ~~violence-related calls for assistance made to the department~~  
15 ~~including whether weapons are involved. All domestic~~  
16 ~~violence-related calls for assistance shall be supported with a~~  
17 ~~written incident report, as described in subdivision (e), identifying~~  
18 ~~the domestic violence incident. Monthly, the total number of~~  
19 ~~domestic violence calls received and the numbers of those cases~~  
20 ~~involving weapons shall be compiled by each law enforcement~~  
21 ~~agency and submitted to the Attorney General.~~

22 ~~(b) The Attorney General shall report annually to the~~  
23 ~~Governor, the Legislature, and the public the total number of~~  
24 ~~domestic violence-related calls received by California law~~  
25 ~~enforcement agencies, the number of cases involving weapons,~~  
26 ~~and a breakdown of calls received by agency, city, and county.~~

27 ~~(c) Each law enforcement agency shall develop an incident~~  
28 ~~report form that includes a domestic violence identification code~~  
29 ~~by January 1, 1986. In all incidents of domestic violence, a report~~  
30 ~~shall be written and shall be identified on the face of the report as~~  
31 ~~a domestic violence incident. The report shall include at least all~~  
32 ~~of the following:~~

33 ~~(1) A notation of whether the officer or officers who responded~~  
34 ~~to the domestic violence call observed any signs that the alleged~~  
35 ~~abuser was under the influence of alcohol or a controlled~~  
36 ~~substance.~~

37 ~~(2) A notation of whether the officer or officers who responded~~  
38 ~~to the domestic violence call determined if any law enforcement~~  
39 ~~agency had previously responded to a domestic violence call at the~~  
40 ~~same address involving the same alleged abuser or victim.~~

1     ~~(3) A notation of whether the officer or officers who responded~~  
2 ~~to the domestic violence call found it necessary, for the protection~~  
3 ~~of the peace officer or other persons present, to inquire of the~~  
4 ~~victim, the alleged abuser, or both, whether a firearm or other~~  
5 ~~deadly weapon was present at the location, and, if there is an~~  
6 ~~inquiry, whether that inquiry disclosed the presence of a firearm~~  
7 ~~or other deadly weapon. Any firearm or other deadly weapon~~  
8 ~~discovered by an officer at the scene of a domestic violence~~  
9 ~~incident shall be subject to confiscation pursuant to Section~~  
10 ~~12028.5.~~

11     ~~(4) A notation of whether the officer noticed evidence of~~  
12 ~~injuries or bodily harm to the alleged victim, the alleged assailant,~~  
13 ~~or to both.~~

14     ~~SEC. 2. Notwithstanding Section 17610 of the Government~~  
15 ~~Code, if the Commission on State Mandates determines that this~~  
16 ~~act contains costs mandated by the state, reimbursement to local~~  
17 ~~agencies and school districts for those costs shall be made pursuant~~  
18 ~~to Part 7 (commencing with Section 17500) of Division 4 of Title~~  
19 ~~2 of the Government Code. If the statewide cost of the claim for~~  
20 ~~reimbursement does not exceed one million dollars (\$1,000,000),~~  
21 ~~reimbursement shall be made from the State Mandates Claims~~  
22 ~~Fund.~~

